

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 6338 OF 2005

Dr.Amit Jayendra Shah. ... Applicant
Versus.
The State of Maharashtra. ... Respondent.

Shri S.V.Kotwal with Shri M.S.Mohite for the Applicant.
Ms.S.D.Shinde, A.P.P. for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 29th Sept., 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and
the learned A.P.P. for the State.

2. Offence has been registered against the
Applicant under section 306 of the Indian Penal Code.
The deceased is the wife of the Applicant. The
Applicant is a Medical Practitioner and the deceased was
also a Medical Practitioner. The deceased was a student
and was residing at Sassoon Hospital Residency Quarters
at Pune. On 20th April 2005, the wife of the Applicant
committed suicide. It is alleged that a suicide note
was found in the room in question. The deceased
allegedly stated therein that she was suffering from
horrible mental torture from her husband i.e. the
Applicant for one year and her life had become
stressful. On the basis of the said suicide note, the
offence was registered on 29th July 2005. The learned

Advocate for the Applicant submitted that apart from the gross delay in recording the F.I.R., there is record to show that on 19th February 2005 the deceased had sent one SMS to the Applicant and on the very day of suicide i.e. on 20th April 2005, the deceased had sent three SMS during the course of the day to the Applicant. He invited my attention to the text of the SMS recorded in the application. He submitted that the said messages are still stored in the cell phone of the Applicant. He submitted that considering the facts of the case, the Applicant is entitled to be enlarged on anticipatory bail.

3. The learned A.P.P. stated that the suicide note clearly records that the deceased was suffering from horrible mental torture from the Applicant and that it appears to be the reason for committing suicide. The learned A.P.P. submitted that looking at the seriousness of the allegations, no case is made out for grant of anticipatory bail.

4. I have considered the submissions. I have also perused the papers relating to the investigation. The F.I.R. itself records that none of the relatives including the father of the deceased have come forward to lodge any complaint. The investigation papers show that the Police have recorded statements of the

relatives of the deceased. The uncle of the deceased in his statement has identified the handwriting of the deceased in the suicide note. However, the uncle has not stated anything about the Applicant and all that he has stated is that when he met the deceased last, the deceased was nervous. The statement of the father of the deceased is also recorded in which the father has not alleged anything against the Applicant. The F.I.R. itself records that the father has no grievance. The relatives of the deceased did not come forward and the F.I.R. is filed by the Police more than three months after the incident.

4. The investigation papers show that the Police have collected necessary data from the cell phone company which discloses that messages (SMS) were sent by the deceased from her cell phone to the cell phone of the Applicant as claimed by the Applicant. However, the exact text of the messages has not been retrieved from the company. The data supports the case made out by the Applicant regarding the messages sent by the deceased and received by the Applicant. Messages sent by the deceased to the Applicant on the fateful day read thus:

Time 6.02 a.m. : "Good morning".
Time 12.05 p.m.: "Going to D.S.A."
Time 2.22 p.m. : "How is your depression because
of me now."

The text of the messages prima facie shows that the deceased was not alleging anything against the Applicant. None of the statements recorded during the investigation show that there is any allegation against the Applicant regarding any demand for dowry. There is no allegation made in the statements against the Applicant regarding ill treatment by the Applicant to the deceased. The relatives of the deceased whose statements have been recorded have not made any allegation whatsoever against the Applicant. The Applicant is a Doctor and so was the deceased. If these are the facts which are borne out from the record, a case is made out for grant of pre arrest bail to the Applicant, subject to the stringent conditions. Though statements of many witnesses are already recorded, the Applicant will have to make himself available for investigation.

4. Hence the following order is passed:

- (i) In the event of the arrest of the Applicant in connection with C.R.No.376 of 2005 registered at Bundgarden Police Station, Pune, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.

- (ii) The anticipatory bail is granted subject to condition that the Applicant will attend the concerned Police station on every Sunday between 11.00 a.m. to 5.00 p.m. till charge-sheet is filed and will cooperate for investigation.
- (iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/ Investigating Agency. The Applicant shall not tamper with the prosecution evidence.
- (iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.
- (v) This order will enure to the benefit of the Applicant only till charge sheet is filed. Thereafter he will be free to apply to the appropriate Court for appropriate relief.

- (vi) Application is disposed of in above terms.
- (vii) The parties to act upon an authenticated copy of this order.

Judge.